

The Library of Congress'

EARLY STATE RECORDS PROJECT

converted from the original microfilm held by the
Vincent C. Immel Law Library, Saint Louis University

through the generous support of a grant from the

Council on Library and Information Resources

MESSAGE

FROM THE

PRESIDENT OF THE REPUBLIC,

CONCERNING

INDIAN RELATIONS;

AND

ACCOMPANYING DOCUMENTS,

TRANSMITTED

TO THE SENATE,

MAY 22d, 1838.

HOUSTON:
TELEGRAPH PRESS.
MDCCCXXXVIII.

X

MESSAGE.

Executive Department, Texas.

City of Houston, 21st May, 1838.

TO THE HONORABLE SENATE,

Gentlemen:—In compliance with a resolution of your honorable body of the 19th inst., I have the pleasure of returning an answer, and submitting such information, as has been within the power of the executive to obtain, on the subject of our Indian relations.

The executive is fully aware of the importance of the subject, and has long been impressed with a conviction that it was necessary for congress to have some action upon it. The identity of the settlement of several tribes, with those of our citizens has inculcated the necessity of establishing a system of policy towards those who are most civilized, and whose attention has been principally called to the pursuits of agriculture; while the wild tribes on our frontier, whose pursuits are different, will require a system of policy to be adopted towards them, which will secure to our citizens, peace and protection.

Within the last three years, but little friendly intercourse has been had with those tribes. Their frequent depredations upon the lives and property of our citizens, admonish us, that they have not been our friends; their tartar like pursuits and habits of life have been such, as to prevent our reaching their communities, and by retaliation, chastising them in such manner as to impress them with a conviction that it is more desirable to court our friendship than to provoke our hostility.

When the Anglo-Saxon race first commenced their settlement in Texas, they found many small bands settled in the section east of the Trinity river, who received them with kindness, and from that time to the present, have maintained with them, the most peaceful relations. They had become inhabitants of the country by the countenance, and were recognized by the authorities of the Mexican government in Texas. They had received grants and concessions from that government to an extent that induced them to believe, as well as the first white emigrants, that they were the lawful possessors of the soil which they inhabited, and the section of country, to which the tribes severally laid claim, with the exception of such grants of lands, as had been previously made to individuals by the government of Spain and Mexico.

We find, as early as 1833, that the ayuntamiento of the municipality of Liberty, gave their assurance to the different bands of the Coosatie tribe, of their belief in the justice of the Indian claims, and a guarantee that their rights would not be infringed, but that they should be protected according to what they understood to be their just rights, which assurance will be found in the accompanying documents, No. 1.

The Indians, satisfied with this guarantee, remained tranquil and happy under its influence, although the convulsions of our country, held out strong inducements to them, to take part in the revolution, and uniting with the Mexicans against the Texians, must have turned the scale and overwhelmed all the fond expectations of the Texian patriots. Nor were they without provocation, to have taken an active and decided part in the contest. Their villages had been surveyed in by speculators, who had given the lie to the assurance of the ayuntamiento, leaving the Indians but one out of two alternatives to choose in their belief, either that the Texians could not redeem the pledges given, or that they were acting towards them with duplicity and perfidy.

Still they remained friendly to the Whites, and in the midst of universal panic and consternation, and the flight of the inhabitants, the defenceless and wretched situation of our women and children, instead of taking advantage of the opportunities offered of massacre and destruction, they received them as friends, treated them with kindness and aided them with all the facilities, they could command, to a place of security. As an evidence that the Mexican government, as late as the 12th day of May,

1835, by a law of the state of Coahuila and Texas, considered that rights had accrued to all those civilized bands of Indians settled in Texas, the honorable senate is referred to document, No. 2., which is an extract furnished by an honorable member of congress.

In the same year, we find in the general consultation of all Texas, that similar views were entertained by that body, and that every solemnity was given to the expression of their unanimous opinion, and in the most solemn manner pledged the public faith for the redemption of the guarantee then gratuitously given. A copy of that document is herewith sent, No. 3., dated 13th November, 1836.

In conformity with that instrument the general Council, on the 22d, December following, passed a resolution, approved the 28th of the same month, by the governor, marked No. 4., appointing commissioners to hold a treaty with said Indians, agreeably to the act of the general Consultation.

The persons appointed by that decree, were commissioned on the same day, as will be seen by reference to document, No. 5, and on the 30th, of the same month, instructions directed to the commissioners, in conformity with the former proceedings of the government, No. 6, were signed, and agreeably to them, a treaty was held on the 23d day of February, 1836, in the first year of the provisional government, and is marked, No. 7, in the documents.

It will be observed by the honorable senate, on a careful and dispassionate comparison of all the documents and circumstances, that the commissioners did not transeend the powers delegated to them, but acted in strict conformity with the previous action of the government, and in a manner which in no wise compromitted either its honor, or the lawful right of any individual.

At the time this treaty was negotiated, if ever a crisis would have justified dissimulation or extravagant promises unauthorized, or not to be redeemed, it was at that moment.

The commissioners were fully apprized of the invasion of Texas, by all the forces of Mexico.

Letters of the immortal Travis, invoking the aid of his fellow citizens, to sustain him in the defence of the Alamo, had already with miraculous expedition reached Nacogdoches, depicting his true situation, and dooming himself with his devoted band to inevitable destruction, before he would permit his country's banner to be dishonored.

Many were then retiring from the country, to a peaceful retreat, whose constitutions or dispositions were not adapted to the hardships of iron war. Yet the commissioners pursued the steady purpose for which they believed they were appointed, and for which they were to be accountable to their country and posterity.

They believed that the authority under which they acted, was the supreme authority of the land. They believed that the pledges which had been given and under which they were then acting, were the pledges of a nation, that would see that its faith was maintained, and its honor preserved from violation. They did not believe that they were to be converted into instruments of duplicity nor the perfidious agents of deception.

The stipulations then made between the contracting parties seemed to be equitable and just, while it secured to both parties, amicable relations, and would prevent one party from becoming hostile to the other. The attitude assumed by the Texian government, had been of its own option. The Indians had not coerced it. They had used no threats against the Texans. It surely could not be a matter of policy on part of the Texian government, merely for the purpose of lulling the Indians for the present time, by the most solemn acts, and to lull them into a state of security and confidence resulting from acts of a government, which were intended to subserve the present moment, by expediency, and so soon as they acquired sufficient power to inflict wrongs upon the Indians with impunity, that they would disregard their national faith, oppress the Indians, and after repeated wrongs, expel them from their wigwams, drive them from their little farms, houseless with their women and children, to the prairies, where they must encounter the wild Indians, outnumbering them twenty to one, whose hostility would overwhelm them, and fleeing from persecution on the one side, they would have no refuge but massacre to embrace.

That the executive should be satisfied as to the validity and correctness of his opinions, in relation to the obligation of the Texian government, he has sought for the best lights which were within his control. Accordingly he called upon the attorney general, whose clear intelligence, calm judgment, and philosophic wisdom, seems to claim much weight for his opinion in relation to the subject. An extract of that opinion, will be found marked No. 8, to which the honorable senate is respectfully referred.

It will be observed by the honorable congress, that on the

first day of March following the treaty, the convention of Texas, met at Washington, when the commissioners submitted the treaty to that primary and honorable body, but owing to the peculiar crisis then existing, it was not acted upon substantively and apart from other matters, but came under the general provision of that body, sanctioning the acts of the general consultation as well as those of the general council, which gave to it all the force and effect of the supreme law of the land.

Subsequent to the treaty, and ever since the present executive came into office, it has been his constant endeavor to establish friendly relations and secure peace with all the Indian tribes. In doing this, his only object was the interest of his country, and he feels perfectly assured that he has in no case transcended the powers delegated to him by the constitution and laws of the land.

It is worthy of remark, and will certainly claim the consideration of the honorable senate, that the conditions so far as they affect the compact between Texas and the Indians, have been preserved most scrupulously on part of the latter.

They have preserved peace which was the only requirement to ensure the fruition of the pledges given by the Texian government. Notwithstanding many provocations have been given to them, to have departed from their peaceful course.

The executive has been assured that the land which they occupy has been intruded upon. Their little improvements have been run in by surveyors, their fields have been run through, their complaints have been disregarded, their horses have been taken, their cattle destroyed, and no less than two Indians have been murdered in cold blood in this city and its vicinity, while the murderers go at large, unpunished. Although they do not complain of these wrongs aloud, nor retaliate upon the lives of our citizens, yet we cannot suppose, because they are Indians, that they do not realize the feelings common to humanity.

It is within the competency of this government, by a wise and just policy, to ensure not only their friendship, but their aid, should it ever be necessary to defend their rights guaranteed and secured to them by pledges equivalent to our own.

It will be observed by the honorable senate that the 5th article of the treaty, provides for the future disposition of the country assigned to the Indians, should they at any future time be disposed to alienate it. The arrangement will be found in these words, "It is agreed and declared by the parties aforesaid, that

the land laying and being within the aforesaid limits, shall never be sold or alienated, to any *person* or *persons*, power or government whatsoever, else than the government of Texas,"—and it will also be discovered, that the treaty secures to the government, the right of trade and intercourse with those Indians. These provisions were deemed necessary to the preservation of the respective rights of the contracting parties, and since individuals have intruded upon and violated the territory designated. The Indians are left to infer that all the pledges given them, were false, or that the government of Texas is too imbecile and weak to compel obedience to its laws. If either should be the fact, we can neither expect their respect for our institutions, nor friendship to ourselves.

Can it be believed for one moment, that at the time the pledges were given to those Indians, of friendship, justice and good faith, that if we had told them, we will survey your lands, expel you from your habitations, and possess them ourselves, that they would not from the universal principle of self preservation, have united amongst themselves, co-operated with the enemy, and decided at once the question of Texian liberty? They believed in our pledges. They have kept their faith, and now because we have a breathing time from war, and derive confidence from the imbecility of our enemy, are we to turn round and tell them, we only intended to deceive you by our promises, we are able now to do you injustice, and it is the only reward we have to bestow for your friendship and confidence?

There are millions of vacant land within the populated limits of Texas, as desirable, had the same industry been bestowed upon their improvement, but *they* are not sought after.

The Indian lands, are the forbidden fruit in the midst of the garden; their blooming Peach trees, their snug cabins, their well cultivated fields and their lowing herds, excite the speculators, whose cupidity, reckless of the consequences which would ensue to the country, by goading those Indians to desperation, are willing to hazard every thing that is connected with the safety, prosperity or honor of our country.

It is not a question arising between the people of Texas, and the Indians, as to the possessions held by the latter, but a decision of this government, as to whether, a few individuals, by a violation of the known claims of the Indians, shall involve us in inquietude and dangers, when the community of Texas, has no interest in common with those, who for personal aggrandize-

ment, have been willing to place at hazard, the peace and lives of its citizens. The preservation of the justly acquired rights of the people should be the objects of government, but not to favor the few, at expense of the many; a just and wise policy, will so far as possible, give its aid to all, but a preference to none.—Justice, in the present instance will secure to us peace, while none will have reason to complain.

Passion and prejudice have never yet attained a desirable object, while integrity, and honor, have never failed to ensure to a nation, the proudest destiny.

SAM. HOUSTON.

DOCUMENTS.

NUMBER 1.

PROCEEDINGS

Of the Ayuntamiento, respecting the Coosaatee Indians.

WHEREAS, the Coosaatee Indians by their chiefs, have represented to the Ayuntamiento of this jurisdiction, that there have been some intruders upon the lands which they claim as the oldest settlers, upon the Trinity river in this municipality, and which they also claim by virtue of the laws of the Mexican government, made for the purpose of settling and colonizing the frontier lands of the province of Texas:—therefore,

Be it resolved, That all persons are hereby prohibited from entering on, either to survey or settle any of the lands situated on the Trinity river, lying between the upper line of Thomas' on the south, and running up said river on the east side to a point two miles above the upper or little Alabama Village on said river the same side, and furthermore all persons are forbidden to encroach upon any lands which shall interfere with any improvements or settlement which the said Indians may have on the west side of the said Trinity river; *provided,* that nothing here-

in shall be understood to apply to persons who may wish to settle east of the Trinity river between the boundaries as above mentioned, so that they shall not settle on or survey any lands between said boundaries nearer than twelve miles in a direct line to said river.

Done at Liberty, October 16th, 1833.

GEORGE ORR, *Pres.*

WM. DUNCAN, *Reg.*

WM. HARDIN, *Reg.*

P. C. JACK, *S. Proc.*

H. B. JOHNSTON, *Ser. Prat.*

It is concluded on by the commissioner Mr. Alderete and myself to approve the above boundaries for the Indians, untill a decision of the governor of the state on the subject.

PETER E. BEAN.

Nacogdoches, Nov. 3d, 1833.

Se habla el govno del Etad.

VINCENTE ALDRETTE.

I certify the above to be a true copy of the original.

S. Z. HOYLE,

Act. pri. Sec.

NUMBER 2.

COPY OF A LAW,

Of the Legislature of Coahuila and Texas, relating to the Indians.

"In order to secure the peace and tranquillity of the state, the government is authorized to select, out of the vacant lands of Texas, that land which may appear most appropriate for the location of the peaceable, and civilized Indians which may have been introduced into Texas.

ARTICLE 2.

It shall establish with them a line of defence along the frontier, to secure the state against the incursions of the barbarous tribes.

Done at Monclova the 12th day of May, 1835.

(Signed,)

AUGUSTIN VIESCA.

Governor.

J. MARIANNE IRALA, Sec.

I certify that the above is a true copy of the original extract.

STEPHEN Z. HOYLE,

Private Sec.

NUMBER 3.

P L E D G E

Of the Consultation, with the Cherokee Indians and Associate Bands.

BE IT SOLEMNLY DECREED,

That we, the chosen Delegates of the Consultation of all Texans, in general Convention, solemnly declare, That the Cherokee Indians and their associate bands, twelve tribes in number, agreeably to their last general council in Texas, have derived their just claims to lands included within the bounds hereinafter mentioned, from the government of Mexico from whom we have also derived our rights to the soil, by grant and occupancy. We solemnly declare, that the boundary of the claims of the said Indians to lands, is as follows: to wit; lying north of the San Antonio road, and the Neches, and west of the Angelina, and Sabine rivers. We solemnly declare that the governor and general council shall immediately on its organization, appoint commissioners, to treat with the said Indians; to establish the definite boundary of their territory, and secure their confidence and friendship. We solemnly declare, that we will guarantee to them the peaceable enjoyment of their rights to their lands

as we do our own. We solemnly declare, that all grants, surveys, or locations of lands, within the bounds hereinbefore mentioned, made after the settlement of the said Indians, are, and of right ought to be, utterly null and void; and, that the commissioner issuing the same, be, and is hereby ordered immediately to recall and cancel the same, as having been made upon lands already appropriated, by the Mexican government. We solemnly declare, that it is our sincere desire that the Cherokee Indians, and their associate bands, should remain our friends in peace and war, and if they do so, we pledge the public faith, for the support of the foregoing declarations. We solemnly declare, that they are entitled to our consideration and protection, as the just owners of the soil, as an unfortunate race of people, that we wish to hold as friends and treat with justice. Deeply and solemnly impressed with these sentiments, and as a mark of our sincerity, your committee would very respectfully recommend the adoption of the following resolution.

Resolved, that all the members of this convention, now present sign this declaration and pledge of the public faith, on the part of the people of Texas.

Done in convention at San Felipe de Austin, this 13th day of November, A. D., 1835.

B. T. ARCHER, *Pres.*

P. B. DEXTER, *Sec.*
 JOHN A. WHARTON,
 JOHN BEVIL,
 WM. P. HARRIS,
 JOSEPH L. HORNE,
 CHARLES WILSON,
 A. HORTON,
 J. D. CLEMENTS,
 R. M. WILLIAMSON,
 A. B. HARDIN,
 WM. N. SEGLER,
 EDWIN WALLER,
 CLAIBORNE WEST,
 PHILIP COE,
 WYLY MARTIN,
 SAM. HOUSTON,
 DANIEL PARKER,
 JAMES W. PARKER,
 R. R. ROYALL,

WILLIAM MENESEE,
 LORENZO DE ZAVALA,
 GEORGE M. PATRICK,
 M. W. SMITH,
 WM. S. FISHER,
 JOHN S. D. BYRAM,
 A. E. C. JOHNSON,
 SAMUEL T. ALLEN,
 W. SMITH,
 ALEXANDER THOMSON,
 WM. WHITAKER,
 ASA HOXEY,
 WYATT HANKS,
 E. COLLARD,
 J. G. W. PIERSON,
 A. G. PERRY,
 MARTIN PARMER,
 JAMES W. ROBINSON,

HENRY SMITH,
R. JONES,
J. S. LESTER,
JOHN W. MOORE,
DAVID B. MACOMB,
D. C. BARRETT,
C. C. DYER,
S. H. EVERITT,
JESSE GRIMES,

JAMES HODGES,
ALBERT G. KELLOGG,
ASA MITCHELL,
HENRY MILLARD,
WM. W. ARRINGTON,
JESSE BURNAM,
GEORGE W. DAVIS,
BENJAMIN FUQUA,
A. HUSTON.

HENRY SMITH, *Governor.*

C. B. STEWART, *Ex'c. Sec.*

I the undersigned secretary of state of the republic of Texas do hereby certify the above to be a true copy of the original document.

Given at the city of Houston under my hand and seal of office, this twenty-sixth day of April, A. D., 1838, and of the Independence of Texas the third.

R. A. IRION.

NUMRER 4.

R E S O L U T I O N

Of the general Council of the provisional government, relative to Forbes, Houston and Cameron, Commissioners to treat with the Cherokee Indians.—1835.

Be it resolved, by the general council of the provisional government of Texas, That Samuel Houston, John Forbes and John Cameron, be and they are hereby appointed commissioners to treat with the Cherokee Indians, and their twelve associate bands, under such instructions as may be given them by the governor and council; and should it so happen, that all the commissioners cannot attend, any two of them shall have power to

conclude a treaty, and report the same to the general council of the provisional government, for its approval and ratification.

Passed December 22d, 1835.

JAMES W. ROBINSON,

Lieutenant Governor, and

Ex Officio president of the General Council.

E. M. PLEASE, *Sec. of Council.*

Approved 28th December, 1835.

HENRY SMITH, *Governor.*

C. B. STEWART, *Sec. of Ex'c.*

NUMBER 5.

COMMISSION

*To John Forbes, Sam. Houston and John Cameron, from governor
Henry Smith, 1835.*

IN THE NAME OF THE PEOPLE OF TEXAS, SOVEREIGN AND FREE.

TO WHOM THESE PRESENTS SHALL COME,

BE IT KNOWN.

That I, Henry Smith, governor of Texas, by virtue of the authority vested in me as governor aforesaid, do hereby, commission John Forbes, Sam. Houston and John Cameron, Esqrs., as commissioners on the part of the government of Texas, in conformity with the declaration of the chosen delegates of all Texas in convention assembled in the month of November last, setting forth the external bounds, within which, certain Indians therein named are to be settled. And in conformity with an ordinance and decree passed by the legislative council of Texas, under date of the 22d inst., authorizing the appointment of the said Houston, Forbes and Cameron, for the purposes aforesaid, to treat with the said Indian tribes in conformity with the superior declaration of the convention, and pursuant to, and in con-

formity with the said ordinance and decree as above designated, and to be governed by the accompanying instructions. All acts performed by the said commissioners on the part, and in the name of the people of Texas, within the purview, and by virtue of this authority shall be valid, and ultimately ratified by this government, in good faith, when finally ratified or sanctioned by this government.

In testimony of which I, Henry Smith, governor as aforesaid, have hereunto set my hand and affixed my private seal; no seal of office being yet provided.

Done and signed at my office in the town of San Felipe,
[L. s.] this 28th day of December, eighteen hundred and thirty-five.

HENRY SMITH, Gov. .

C. B. STEWART, *Sec. of Executive.*

NUMBER 6.

INSTRUCTIONS

From governor Henry Smith, to Forbes, Cameron and Houston, to treat with the Cherokee Indians, 1835.

Executive department of Texas.

To

JOHN FORBES,

SAM. HOUSTON and

JOHN CAMERON, Esq'rs.

Gentlemen:—The following will be handed you, as your instructions on the part of the government of Texas, by which you will be governed in the discharge of your duties as commissioners in treating with the Cherokee Indians, and their associate bands, in conformity with your commissions.

You will proceed to Nacogdoches as soon as practicable and enter on the discharge of your duties, in the discharge of which, you will in no wise transcend the declaration made and signed by the consultation in November last. You will in all things pursue a course of justice and equity towards the Indians, and to protect all honest claims of the whites, agreeably to such laws, compacts or treaties, as the said Indians may have heretofore made with the Mexican republic.

You will provide in said treaty with the Indians, that they shall never alienate their lands, either separately or collectively, except to the government of Texas. And to agree that the said government, will at any time hereafter, purchase all their claims at a fair and reasonable valuation. You will endeavor, if possible, to secure their effective co-operation at all times when it may be necessary to call the effective force of Texas into the field, and agreeing for their services in a body for a specific time.

If found expedient and consistent, you are authorized and empowered to exchange other lands within the limits of Texas, not otherwise appropriated, in the room of the lands claimed by said Indians, and as soon as practicable, you will report your proceedings to the governor and council, for their ratification and approval.

I am respectfully,

Gentlemen,

Your ob't. serv't.

HENRY SMITH, Governor.

C. B. STEWART, Sec. of Executive.

San Felipe de Austin, Dec. 30, 1835.

NUMBER 7.

T R E A T Y

With the Cherokees, by Houston, Forbes and Cameron, commissioners.

This treaty made and established between Sam. Houston, and John Forbes, commissioners on part of the provisional government of Texas of the one part and the Cherokees and their associate bands, now residing in Texas, of the other part; to wit:

Shawnees, Delawares, Kickapoos, Quapaws, Choctaws, Boluxies, Iawanies, Alabamas, Cochatties, Caddoes of the Naches, Tahookataxies and Unataquous. By the head chiefs, head men and warriors of the Cherokees, as elder brother, and representative of all the other bands, agreeably to their last general council. This treaty is made conformably to a declaration made by the last general consultation at San Felipe, and dated 13th November, A. D., 1835. Sancroft Library

ARTICLE 1st.

The parties declare that there shall be a firm and lasting peace, for ever; and that a friendly intercourse shall be preserved by the people belonging to both parties.

ARTICLE 2d

It is agreed and declared that the before named tribes or bands; shall form one community; and that they shall have and possess the lands within the following bounds; to wit,—lying west of the San Antonio road, and beginning on the west at the point where the said road crosses the river Angelina, and running up said river until it reaches the mouth of the first large creek, below the great Shawanec Village, emptying into the said river from the north east, thence running with said creek to its main source, and from thence a due north line to the Sabine, and with said river, west; then starting where the San Antonio Road crosses the Angelina, and with the said road to where it crosses the Naches, and then running up the east side of said river in a northwest direction.

ARTICLE 3d.

All lands granted or settled, in good faith, previous to the settlement of the Cherokees, within the before described bounds are not conveyed by this treaty, but excepted from its operation. All persons who have once been removed, and returned, shall be considered as intruders, and their settlements not respected.

ARTICLE 4th.

It is agreed by the parties aforesaid that the several bands or tribes named in this treaty, shall all remove within the limits or bounds as before described.

ARTICLE 5th.

It is agreed and declared by the parties aforesaid, that the land lying and being within the aforesaid limits, shall never be sold, or alienated, to *any person or persons*, power or government, whatsoever, else than the government of Texas. And the commissioners on behalf of the government of Texas, bind themselves, to prevent in future, all persons from intruding within the said bounds. And it is agreed on the part of the Cherokees, for themselves and their younger brothers, that no other tribes or bands of Indians whatsoever, shall settle within the limits aforesaid, but those already named in this treaty, and now residing in Texas.

ARTICLE 6th.

It is declared that no individual person, member of the tribes before named shall have power to sell or lease land to any person or persons, not a member or members of this community of Indians, nor shall any citizen of Texas, be allowed to lease or buy land from any Indian or Indians.

ARTICLE 7th.

That the Indians shall be governed by their own regulations and laws within their own territory, not contrary to the laws of the government of Texas. All property stolen from the citizens of Texas, or from the Indians, shall be restored to the party from whom it was stolen, and the offender or offenders shall be punished by the party to whom he or they may belong.

ARTICLE 8th.

The government of Texas, shall have power to regulate trade, and intercourse, but no Tax shall be levied on the trade of the Indians.

ARTICLE 9th

The parties to this treaty agree, that one or more agencies shall be created, and at least one agent shall reside specially within the Cherokee villages, whose duty it shall be, to see that no injustice is done to them, or other members of the community of Indians.

ARTICLE 10th.

The parties to this treaty, agree, that so soon as Jack Steele and Sam. Binge, shall abandon their improvements, without the limits of the before recited tract of country, and remove within the same, that they shall be valued, and paid for by the government of Texas, they the said Jack Steele and Sam. Binge, having until next November, from the date of this treaty allowed them to remove within the limits before described, and that all the lands and improvements now occupied by any of the beforementioned bands, not lying within the limits before described, shall belong to the government of Texas, and subject to its disposal.

ARTICLE 11th.

The parties to this treaty, agree and stipulate, that all the bands as before recited (except Binge and Steele) shall remove within the before described limits, within eight months from the date of this treaty.

ARTICLE 12th.

The parties to this treaty agree, that nothing herein contained shall affect the relations of the Saline on the Naches nor the settlers in the neighborhood thereof, until a general council of the several bands shall take place, and the pleasure of the convention of Texas be known.

ARTICLE 13th.

It is also declared, that all titles issued to land, not agreeably to the declaration of the general consultation of the people of all Texas, dated the thirteenth day of November, 1835, within the before recited limits, are declared void as well as all orders and surveys, made in relation to the same.

Done at colonel Bowles' Village on the 23d day of February, 1836, and the first year of the provisional government of Texas, signed by

Witnesses:

his
FOX & FIELDS, } Interpreter.
mark.
HENRY MILLARD,
JOSEPH DURST,

SAM. HOUSTON,
JOHN FORBES,
his
COL. & BOWLES,
mark.

A. HORTON,
 GEORGE W. CASE,
 MATHIAS A. BRIGHAN,
 G. W. HOCKLEY, *Sec. to Com.*

his
 BIG X MUSH,
 mark.
 his
 SAM. X BINGE,
 mark.
 his
 COSOOTE, X
 mark.
 his
 CORN X TASSLE,
 mark.
 his
 THE X EGG,
 mark.
 his
 JOHN X BOWL,
 mark.
 his
 TUNNETEE X
 mark.

I certify the above to be a true copy of the Tréaty.

[Signed.]

JOHN FORBES, *Com.*

NUMBER 5.

OPINION

Of the Attorney General, in regard to the Indian Tréaty.

To

HIS EXCELLENCY,

The President of the Republic of Texas.

SIR:—I have looked into the treaty with the Cherokee Indians, and their associate bands, together with the documents,

accompanying the same, and have endeavored to bestow upon them the consideration and reflection which their importance demands. As far as it was possible for the general consultation to concede and establish the right of the tribes in question to the Territory designated, the Indian title was guaranteed by that body in their solemn declaration and pledge made on the 13th November, 1835, and severally signed by all the members of that body.—The language of that instrument partakes largely of the strong and deep feeling that marked the crisis, at which it was put forth. It would be difficult to combine language in any form better calculated to produce with those to whom it was addressed, implicit and unqualified confidence in its truth and sincerity.

A departure at this time from its stipulations and professions without good cause, cannot fail to be regarded by the Indians and the world, as an act of the greatest perfidy and injustice. If it were admitted that the consultation transcended its legitimate powers, in executing the declaration and pledge referred to, still as the Indians could not be presumed to know, and did not in fact know the limitations—if any—that were imposed upon the authority of that body, the principles of common justice and good faith, would seem to require its fulfillment by the people of Texas. A little attention, however, to the character of that body, and the subsequent course of the government, will I think satisfy all, that its powers were fully equal to the authority it assumed.

This body, consisting of about sixty members, was a radical and primary representation of the people of all Texas, in their political capacity. They assembled independently of Coahuila, and the political organization which had formerly existed, and by this act, become virtually, severed and separate from the Mexican Empire. They were the only political authority known to the country for the time being, and were therefore necessarily charged with the duties and attributes of government. They were the government, *De facto*. They exercised the prerogatives of government. They suspended the land laws, and closed the courts of justice. They enacted laws and caused them to be executed. They levied troops, created civil and military officers, placed the country in a posture of defence, and finally organized a provisional government. If there was any one subject more immediately connected with their duties than another, or more clearly within the range of their powers, we should in-

fer, from the history of that period, it was that of our relations with Indian bands upon the northern frontier. Aware of the importance of cultivating a friendly understanding with these Indians, the Mexican government had in May, 1835, made provision for selecting from their vacant lands in Texas, such a district as should seem most appropriate for their location.

On the 13th November following, the consultation, appreciating the policy of such an arrangement, make their declaration and pledge. If this was not within the scope of their powers, was the closing of the land offices, and the suspension of the land system by them, a lawful act?—or, if unlawful, are all the titles and surveys made since the offices were ordered to be closed, legal and valid? A little reflection will shew us, that any attempt to restrain the powers of the consultation within special limits, and sustain or invalidate their acts, as they seem to fall within or beyond those limits—involves consequences to the country of a most serious character.*

In December 1835, the provisional government established by the constitution, appointed commissioners to treat with the Indians, in pursuance of the proffer in the declaration and pledge. They commissioned them, gave them written instructions and despatched them on their mission. Their labors resulted in the treaty of the 23d, February, 1836.

It will be observed, that so far as concerns the claims of the Indians to the district of country assigned them, as lying "north of the San Antonio Road and the Neches, and west of Angelina and Sabine rivers," their right is conceded and established by the declaration and pledge.

To this extent it had become a vested right, and the only office of the commissioners upon this part of the treaty was, to ascertain and fix with more precision if possible, the bounds and limits of the grant. I have compared with some attention, the provisions of the treaty, with the instructions furnished the commissioners, and am unable to discover any discrepancies unfavorable to the government.

That it would be more convenient to have all the lands of the republic, cleared of Indian claims, and subject to the disposition of our own citizens, is very plain, but that they also are of right entitled to a resting and suitable provision in the country where their lot has been cast, is equally plain; and whatever may be the disparity between them and us, in point of intelligence, power or social condition, they have the same right as

ourselves, to the benefit of those great principles of national justice and equity, which are immutable and universal.

With great respect,

Your obedient servant,

JOHN BIRDSALL.

Attorney General.